

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY PARIS

AMCONSUL ISTANBUL

UNCLAS STATE 157496

E.O. 11652: N/A

TAGS: CGEN: (PARIS AIRCRASH LITIGATION)

SUBJECT: DEPOSITIONS AND AFFIDAVITS

REF: PARIS 16829, ISTANBUL OM 6/11/75

SUMMARY: DEPARTMENT SHARES CONCERN OF EMBASSY AND CONGEN THAT PERFORMANCE OF NOTARIAL SERVICE UNDER CIRCUMSTANCES SET FORTH IN REFERENCED COMMUNICATIONS MIGHT HAVE THE EFFECT OF ALLOWING OFFICIAL SEAL TO BE USED IN FURTHERANCE OF IMPROPER PURPOSE. NEVERTHELESS, DEPARTMENT DOES NOT BELIEVE THAT REFUSAL OF NOTARIAL SERVICE IS PROPER SOLUTION, AND SUGGESTS ALTERNATIVE SET FORTH HEREIN.

1. DEPARTMENT COMMENDS ADDRESSEE POSTS FOR ALERTNESS TO POSSIBILITY THAT AUTHORITY OF THEIR OFFICES WAS BEING ENLISTED IN AID OF DISINGENUOUS SCHEME. AS STATED IN 7 FAM 821.1, CONSULAR OFFICERS SHOULD TAKE CARE TO PREVENT SUCH OCCURENCES. ON OTHER HAND, CONSULAR OFFICER MUST RECALL THAT HE EXPRESSLY COMMANDED BY CONGRESS TO TAKE FROM ANY PERSON ANY OATH WHENEVER APPLICATION IS MADE TO HIM THEREFOR (22 USC 1195).

2. BECAUSE THIS LEGISLATIVE MANDATE IS SO SWEEPING AND
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AFFIRMATIVE, ONLY TWO NARROWLY DRAWN EXCEPTIONS ARE

RECOGNIZED. THE FIRST IS THAT IN WHICH PERFORMANCE OF THE NOTARIAL ACT IS EXPRESSLY PROHIBITED BY U.S. OR LOCAL LAW. THE DEPARTMENT IS UNAWARE OF ANY PROHIBITION IMPOSED BY U.S. LAW, AND DOES NOT CONSIDER THAT FRANCE'S DECLARATION WITH RESPECT TO ARTICLE 15 OF THE HAGUE EVIDENCE CONVENTION CONSTITUTES PROHIBITION ON PERFORMANCE OF NOTARIAL SERVICES.

3. SECOND BASIS FOR REFUSAL TO PERFORM A NOTARIAL SERVICE IS THAT IN WHICH OFFICER HAS REASONABLE GROUNDS FOR BELIEVING DOCUMENT WHICH HE ASKED TO NOTARIZE WILL BE USED FOR PURPOSE PATENTLY UNLAWFUL, IMPROPER OR INIMICAL TO BEST INTERESTS OF UNITED STATES. THE PRESENT SITUATION APPEARS ON ITS FACE TO FALL INTO THIS CATEGORY. HOWEVER, IT SHOULD BE REMEMBERED THAT THIS BASIS FOR REFUSING A NOTARIAL SERVICE IS MERELY GLOSS ON THE LAW. BECAUSE IT IS IMPLICIT AND STATUTE IS EXPRESS, THE EXCEPTION MUST BE

CONSTRUED NARROWLY SO AS NOT TO OPERATE IN DEROGATION OF PLAIN INTENT OF CONGRESS.

4. ALTHOUGH IT CLEAR CONGRESS DID NOT INTEND FOR NOTARIAL AUTHORITY IT CONFERRED ON AMERICAN CONSULAR OFFICERS TO BE USED IN AID OF PERPETRATING FRAUDS ON COURTS, IT EQUALLY CLEAR CONGRESS WANTED THIS AUTHORITY TO BE AS COMPLETELY AVAILABLE AS POSSIBLE. DEPARTMENT CONSIDERS APPROPRIATE MEANS OF RECONCILING THESE TWO DESIRES IN THIS INSTANCE IS TO PERFORM REQUESTED SERVICE, WITH DISCLAIMER TO EFFECT THAT AFFIANT APPEARED NOT TO UNDERSTAND, AND ADMITTED NOT UNDERSTANDING, ENGLISH LANGUAGE. (SEE 7 FAM 821.3 AND 832.6-2). CONSULAR OFFICER MAY ALSO WISH TO POINT OUT TO AFFIANT THAT PERJURY IS PUNISHABLE BY UP TO FIVE YEARS IN PRISON AND \$2000 FINE UNDER 18 USC 1621. PERJURY BEFORE CONSULAR OFFICER IS A SEPARATE CRIME, PUNISHABLE BY UP TO THREE YEARS IMPRISONMENT AND \$3000 FINE (22 USC 1203).

5. COPIES OF THE REFERENCED COMMUNICATIONS HAVE BEEN SENT TO JUDGE PEIRSON HALL, U.S. DISTRICT COURTHOUSE, LOS ANGELES, AND JUDGE'S CLERK HAS BEEN ADVISED OF MATTER AND UNCLASSIFIED

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DEPARTMENT'S PROPOSED COURSE OF ACTION.

6. FOR ISTANBUL: THE DEPARTMENT BELIEVES THAT PROCEDURE SUGGESTED ABOVE IS APPLICABLE NOT ONLY THIS CASE, BUT TO GENERAL PROBLEM DESCRIBED IN ISTANBUL'S OM OF MARCH 7. INGERSOLL

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